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No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF
MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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Amicus Curiae

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER

Now comes Raymond Dunn, Esq. a duly licensed California attorney. He respectfully prays permission be granted for him to file the attached brief Amicus Curiae in support of Petitioner.

This motion is being filed as

the opposing party, Supreme Judicial Court, and Bar Counsel to date have not indicated their consent to the filing of Amicus Curiae briefs in support of Petitioner as required by United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as a lawyer and as a Roman Catholic Priest. The right to vote is precious. As a registered voter, he is interested in not having others purport to vote for him.

He wishes to bring to the Court's attention relevant demographic facts which have not already been brought to its attention and which have not been raised by the parties.

That relevant information concerns the extent to which the " One Person, One Vote " concept is abrogated by the state statutes the Commonwealth of Massachusetts recognized.

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity or Full Faith and Credit apply to a State Bar Court of the California State Bar Association, a private organization.

Amicus requests the Petition be granted so that California citizens are not denied an important vote.

RESPECTFULLY SUBMITTED,

-16-90

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Amicus Curiae

QUESTIONS PRESENTED

1. Is a state statute which directs 23 private persons on a board of a California State Bar Association to create a State Bar Court to license California attorneys a denial of " One Person, One Vote " rights to the 30 million other citizens ?

2. Is a state statute which authorizes seven State Supreme Court justices to appoint Judges to such an alleged State Bar Court when Article 6, section 16 of the California Constitution only authorizes judges elected by the voters to sit in any state court a denial of " One Person, One Vote " rights to 30 million other citizens ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

BETSEY WARREN LEBBOS, ESQ.
P.O. Box 40
New Almaden, Ca.
95042-0040

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent Court

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Respondent Bar Counsel

TABLE OF AUTHORITIES

CASES :

Avery v. Midland County, 390 U.S.474 (1968) 6

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

INTEREST OF AMICUS

Amicus is interested in this Court hearing the tendered Petition. Unless heard, it is doubtful another Petition with such a clear statement of United States Consti-

tutional issues could ever be filed.

This arises from the inability of California attorneys obtaining a written decision from the California Supreme Court. With the statutes and rules now providing that its denial of a Petition without an opinion permits the alleged State Bar Court order to be the final and enforceable order suspending or disbarring any California attorney, while the State Bar is prohibited as an administrative agency from deciding any constitutional or law issues under Article 3, section 3.5 of the California Constitution, said decisions may not address any constitutional claims.

With no decision for this

court to review, it would be difficult for it to undertake review.

Since the Petitioner has gone to the expense and trouble to go to another state and obtain a reviewable final judgement from its State Supreme Court, since she could obtain none in the State of California, she should be heard in order for California citizens, voters, and attorneys to be heard.

Amicus requests leave to file a brief Amicus Curiae for Petitioner as he is interested as a duly licensed California attorney and a Roman Catholic Priest as well as a registered voter.

He addresses herein the need to not have another state recog-

nize the California system which is founded on allowing 23 private persons to vote to create a court and seven persons permitted to vote to choose judges to it.

The tension between government and citizen is best exemplified by the government passing statutes allowing only select persons to vote.

All references hereinafter, unless otherwise indicated, are to sections of the California Business and Professions Code.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION

Amendment 1. Congress shall make no law ... abridging the freedom of speech, ...; or the right of the People ... to petition the Government for a redress of

grievances.

Amendment V. No person ... shall be deprived of life, liberty, or property, without due process of law...

Amendment XIV, section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Article VI, section 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof... shall be the supreme Law of the Land; and

the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of an State to the Contrary notwithstanding.

SUMMARY OF ARGUMENT

The question presented is whether this Court's rulings which provide that first amendment and equal protection rights extend to voting applicable to any 'general governmental power over any geographic area,' as stated in Avery v. Midland County, 390 U.S. 474 (1968), and extended in this Court's ruling in Hadley v. Junior College District 397 U.S. 50 (1970), apply to invalidate a state legislative scheme where only 23 private persons were allowed to vote to create a court,

and seven persons allowed to vote to select judges to it when that court now purports to exercise governmental power to license California lawyers.

Amicus submits that the Massachusetts judgment must be reversed as recognition by it of an alleged State Bar Court effectively disenfranchises 30 million United States citizens in California. In 1966 the voters voted not to allow their legislature to create any new courts and they have never voted to allow 23 private people to do so either.

I.

ARGUMENT

The State Bar Court and its alleged " Judges are Unconstitutional as a Denial Of " One Person, One Vote "

Pursuant to Norton v. Shelby County, 118 U.S. 425, 30 L. Ed. 178, 6 S.Ct. 1121, an unconstitutional court has no judges, process, orders, or proceedings.

What is not addressed in whether a state court is unconstitutional when it is created without the vote of the People and in fact, against the prior vote of the People of a state.

The substantial federal question is that such a defective court may now determine who will be available to the citizens as their protector lawyers. Lawyers are essential to the public being protected from their own government. Without those lawyers, they have no protection.

Amicus believes this court's decision in Keller v. State

Bar, (1990) 495 U.S.____, 110 L. Ed. 2d. 1, 110 S. Ct._____, overruling 767 P. 2d. 1020, 255 Cal. Rptr. 542 (1989), was very clear.

This Court stated that the California State Bar Association is not a governmental agency, for purposes of a Federal question. It is a private membership trade group.

Unlike other states, the California State Bar Association was not created by either the Judicial branch or by its members. It was created by the state legislature in 1927. The trade group is an agent of the legislative branch and not of its members.

The regulation of the legal profession is effectively done by

the Legislature by statute and not the Judiciary. With this court's decision holding that requiring attorneys to join a bar association is constitutional, but that the California State Bar Association is not governmental, the California State Bar Association still insists it is governmental as now both the state legislature and the state supreme court have authorized it to have a State Bar Court and to, in effect, license California lawyers.

The caveat here is that although California Supreme Court review is theoretically available to contest anything the State Bar claims, as a practical matter all Petitions are being denied. Thus, the one exercising the governmental power to license California attor-

neys is their own opponents and competitors in a trade group and not any entity that is empowered by the People to exist and possess their power.

The legislative control is so great that it even dictates who will be on the Board of the California State Bar Association so that the members themselves do not have a true vote in their own trade group.

Is Section 6086.5, which provides, " The Board of Governors (of the California State Bar Association) shall create a State Bar Court.." a denial of citizens' rights to "One Person, One Vote ?" Is section 6079.1 which permits the seven Justices of the State Supreme Court to choose judges to

it also a denial of " One Person, One Vote ? "

The Board of Governors of the California State Bar Association is composed of 23 private persons. Sections 6010-6015.

Since all of the voters in 1966 voted to reserve to themselves the right to directly vote to create any new courts and deleted all legislative authority to create any new courts, all 30 million United States citizens' rights to vote are substantially affected. (1)

Throughout the composition of the State Bar 23 member board, the

(1) Art.6, Secs.1 and 9, Ca. Consti. The voters also voted in 1966 to designate the California State Bar Association as a corporation, and not a Court, which vote is voided by the state statutes at issue.

' One Person, One Vote ' rule is ignored both internally and externally. Sections 6011-6013.5, 6021. Only 16 out of the 23 Board members are, in fact, voted on by any compelled state bar members. Sections 6012-6013.

The President of the Bar is chosen by the Board itself. Section 6021.

One of the 23 seats is for a member of the California Young Lawyers Association. Section 6013.4. This is an association created by the State Bar Association itself. Compelled dues, without the consent of the membership, finance and run its operations. It was an association created without the vote of any compelled member to give special help and assist

ance to lawyers under the age of 35 and to try and enlist them to become active in the California State Bar Association's activities. Thus the dues are used from all to sponsor just the few. 40 per cent of all California lawyers are under the age of 35. Thus, one of the 23 votes is that of an agent of the State Bar organization itself.

The sixteen out of 23 board members who are voted on by the compelled members are chosen from nine Bar Districts that were created in 1927. Those Bar Districts have no relationship to number of attorneys, population, or voters in them.

In one Bar District 4000 attorneys have no vote, whereas in another, 1,600 attorneys have the

equivalent of three votes apiece.

The remaining six " Public members " (non-lawyers) are appointed by the Governor, or the Senate Rules Committee, or the Speaker of the Assembly. Section 6013.5.

Almost 1/3 of the board members actually ever voted on by any compelled member are from Los Angeles County. Section 6013 (c). Los Angeles County has five votes out of the 23.

However, Bar Districts 2, 4, 5, 6, and 8 with almost 40,000 active attorneys compared with Los Angeles' 36,612 have the same five votes as Los Angeles, thereby disenfranchising 4000 active attorneys in Bar Districts 2, 4, 5, 6, and 8. With Bar District 5 having 5765 active attorneys, only

1765 have an effective vote while 4000 do not, compared with the 1,657 in Bar District 1 who have almost the equivalent of three votes apiece.

Bar District 1 with 1,657 active attorneys has the same vote as Bar District 8 with 10,867. Bar District 1 covers California north of San Francisco, which is by and large rural. Bar District 8 covers the urban areas of San Diego, Riverside, Orange, San Bernadino, and Inyo Counties. Thus, those in Bar District 8, an urban area, have the equivalent of about one/ tenth of a vote. When Los Angeles has five votes with 36,612 active attorneys while Orange County and the other four counties surrounding it have only one vote with 10,867,

Orange County attorneys' votes are diluted by about one-third.

This can be attributed to the fact that the 1,657 active attorneys who serve 356,660 registered voters and a total population area of 1,153,100 citizens in District 1 have the same vote as an area with 10,867 active attorneys serving 2,193,845 registered voters and a total population of 4,761,000 citizens in District 8.

Bar District 5 is treated equally to Bar District 1, although it has double the population of District one- 2,172,600 compared with 1,153,100 citizens. Santa Clara, Contra Costa, and Alameda counties (District 3), although diluted in vote in relation to Bar District 1, have far greater voting power

with two votes than Inyo, San Bernadino, Riverside, Orange, and San Diego (Bar District 8) with one.

The former with 3,506,200 citizens have two votes while the latter with 4,761,000 citizens have only one. With a general population of only 3,564,440, and with five votes, District 7 (Los Angeles) can control the board while District 8 with 4,761,000 citizens, has a minority vote of one.

Where one seat is for an appointee from the Senate Committee on Rules, that Committee is not even representative of the 40 Senators or any other committees or the population at large. The Public did not elect these Senators to pass statutes claiming

they sit on other boards or agencies and determine policy of private membership groups in the state.

Thus, to the extent that the legislature has delegated to one of its committees the power to vote to select a person to sit on a private membership group, it is ultra vires their official functions under Article 4, Section 1 of the California Constitution.

The same unlawful ultra vires unconstitutionality applies to the seat filled by the Speaker of the Assembly. The statute which permits the Governor to fill four seats with his own political appointees also unlawfully deprives both the compelled attorney members and the population at

large of their right to vote as the function of the Governor is to execute the law and fill interim vacancies in judgeships in courts, but his constitutional duty does not include making political appointments to a private membership board.

Where the seven remaining seats on the Board include one from the California Young Lawyers Association, since 40 percent of the lawyers are under 35, those under 35 are given the equivalent of two votes to the one vote for every lawyer over 35, where the older lawyer is given one at all.

Of the 16 attorney member votes, Districts with the following general populations are all treated equally with one vote a-

piece: 1,153,100; 727,400; 2,172,600; 2,140,300; 4,761,000; and 2,577,100.

The disparity in population is so great that over four million citicitizens in one District have no vote. (Compare District 1 with District 8)

Thus, the 9 Bar Districts violate both internally and externlly the requirement of ' One Person, One Vote.' The remaining 7 seats abolish all votes of the people, and thus, merely reflect the fact that the State Bar is not democratically organized, but is a hegemony of the few who do not represent either a) their own members or b) the general population, or c) any registered voters.

CONCLUSION

This statistical data is furnished at this time as it indicates the importance of hearing the Petition. In Keller, supra, this court held the following :

" The State Bar of California was created, not to participate in the general government of the state, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. Its members and officers are such not because they are citizens or voters, but because they are lawyers. "

In fact, six of the 23 officers who sit on the board of the State Bar are non-lawyers. They are elected by the government and not the compelled members. Amicus believes that all the statutes creating the State Bar of California are, in

fact, unconstitutional as a violation of separation of powers and the right to vote of the 122,000 compelled members.

When the Full Faith and Credit clause requires recognition of the " public acts, records, and judicial proceedings," of a sister state, it would appear clear that Massachusetts was required to recognize the California Constitution first. It dictates the California State Bar Association is a corporation. Article 6, section 9, Cal. Constitution. It dictates that all judicial power is in its California Supreme Court, Courts of Appeal, Superior Courts, Municipal Courts and Justice Courts. Article 6, section 1, Cal. Constitution.

The Petition should be heard

to reverse and vacate the Judgment on the basis that the rights of 30 million California citizens to vote to create their own courts and elect and remove their own judges to their own courts are abrogated by state statutes asserting that 23 private people vote instead.

RESPECTFULLY SUBMITTED,

11-16-90

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Amicus Curiae

VERIFICATION

I have read and prepared the foregoing Amicus Curiae Brief for Petitioner and Motion and declare under penalty of perjury that it's contents are true and correct, based on my own personal knowledge, information, and belief, and this Verification is executed this 16th day of November, 1990 at San Jose, California.

RESPECTFULLY SUBMITTED,

Raymond Dunn

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